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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,163	03/26/2004	David S. F. Young	2056.029	8351

21917 7590 12/13/2007
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EXAMINER

UNGAR, SUSAN NMN

ART UNIT	PAPER NUMBER
1642	

MAIL DATE	DELIVERY MODE
12/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/810,163

Applicant(s)

YOUNG ET AL.

Examiner

Susan Ungar

Art Unit

1642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 04 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-22, 24, 25 and 27-32 is/are pending in the application.
- 4a) Of the above claim(s) 1-20 and 29-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 21-22, 24-25, 27-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

1. The Amendment filed October 4, 2007 in response to the Office Action of April 4, 2007 is acknowledged and has been entered. Previously pending claims 23, 26 have been cancelled, claims 22 and 27 have been amended. Claims 21-22, 24-25, 27-28 are currently being examined.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Applicant submits a declaration to overcome Examiner's setting of a priority date of March 26, 2004 for the instant Application, however, the declaration is not found to be persuasive for the following reasons:

Dr. Young states that the PTA5690 of the parent application and the instant application are in fact one and the same and that the differences in functional activity of the two antibodies is due to differences in assays used to determine the data reported by Examiner, wherein Dr. Young specifically states that the data from the two different assays cannot be readily correlated wherein data is from ELISA assay with unpurified antibody and data from FACS assay with purified antibody. Dr. Young then specifically states that although the data from the two different assays cannot be readily correlated, the findings in the two assays do not contradict each other. The Declaration has been considered but has not been found persuasive given that the two different assays were performed with two different antibody preparations and thus it cannot be readily determined that the antibody of the parent case and the instant case are one and the same. Thus, the information in the Young Declaration cannot be readily evaluated and the priority date set for the instant application remains given the contradictory data presented in the parent application and the instant specification. It is noted for Applicant's convenience that side-by-side evaluation of each the antibody preparations in each of the assays

might obviate the instant imposition of a priority date of March 26, 2004 for the instantly claimed invention.

4. The following rejections are being maintained:

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 21-22, 24-25, 27-28 remain rejected under 35 USC 112, first paragraph for the reasons previously set forth in the paper mailed April 4, 2007, pages 3-12.

Applicant argues that the claims have been modified to be exactly commensurate in wording and scope with those of U.S. 7,256,272, the parent case of this application, which claims were allowed by the Examiner, directed toward a different disclosed molecule, specifically the hybridoma cell line deposited with the ATCC having accession number PTA-4622. It is respectfully submitted that the claims currently under examination, drawn to the isolated monoclonal antibody produced by the hybridoma deposited with the ATCC as Accession Number PTA-5690; a humanized antibody produced from the isolated monoclonal antibody produced by the hybridoma deposited with the ATCC as Accession Number PTA-5690, antigen binding fragments of the isolated monoclonal antibody and of the humanized antibody, and the claimed isolated monoclonal antibody, humanized antibody or antigen binding fragments thereof conjugated with a member selected

from the group consisting of toxins, enzymes, radioactive compounds, and hematogenous cells, are fully enabled by the specification.

The argument has been considered but has not been found persuasive because every application is examined on its individual merits and given that Applicant has not addressed any of the issues raised in the previous office action, the rejection is maintained.

7. All other objections and rejections set forth in the previous office action are hereby withdrawn.

8. No claims allowed.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Ungar, PhD whose telephone number is (571) 272-0837. The examiner can normally be reached on Monday through Friday from 7:30am to 4pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms, can be reached at 571-272-08932. The fax phone number for this Art Unit is (571) 273-8300.


Susan Ungar

Primary Patent Examiner

November 21, 2007